IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Patent Application

Applicant(s)   Cofino et al.
Docket No.:   YOR920000151US2
Serial No.:   10/620,407
Filing Date: July 16, 2003
Group: 3625
Examiner: Mark A. Fadok

Title: System, Program Product, and Method for Comparison Shopping with Dynamic Pricing over a Network

TRANSMITTAL OF REPLY BRIEF

Mail Stop Appeal Brief - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith are the following documents relating to the above-identified patent application:

(1) Reply Brief.

In the event of non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit **IBM Corporation Deposit Account No. 50-0510** as required to correct the error. A duplicate copy of this letter is enclosed.

Respectfully submitted,

Dated: September 11, 2006

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I hereby certify that this paper is being deposited on this date with the U.S. Postal Service as first class mail addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Signature: _____ Date: September 11, 2006

Title: System, Program Product, and Method for Comparison Shopping with Dynamic Pricing over a Network

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REPLY BRIEF

20 Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
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25

Sir:

Appellants hereby reply to the Examiner's Answer, mailed July 11, 2006 (referred to hereinafter as "the Examiner's Answer"), in an Appeal of the final rejection 30 of claims 1-22 in the above-identified patent application.

REAL PARTY IN INTEREST

A statement identifying the real party in interest is contained in Appellants' Appeal Brief.

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RELATED APPEALS AND INTERFERENCES

A statement identifying related appeals is contained in Appellants' Appeal Brief.

STATUS OF CLAIMS

A statement identifying the status of the claims is contained in Appellants' Appeal Brief.

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STATUS OF AMENDMENTS

A statement identifying the status of the amendments is contained in Appellants' Appeal Brief.

SUMMARY OF CLAIMED SUBJECT MATTER

10 A Summary of the Invention is contained in Appellants' Appeal Brief.

STATEMENT OF GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A statement identifying the grounds of rejection to be reviewed on appeal is contained in Appellants' Appeal Brief.

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CLAIMS APPEALED

A copy of the appealed claims is contained in an Appendix of Appellants' Appeal Brief.

20 ARGUMENT

In the Response to Arguments section of the Examiner's Answer, the Examiner asserts that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. The Examiner further asserts that, if the prior art structure is capable of performing the intended use, then it meets the claim.

First, Appellants note that the statement made by the Appellants and cited by the Examiner reads: "whether or not the system disclosed by Herz is capable of being adapted to perform the cited steps, Herz does not disclose or suggest the cited steps." Appellants statement was made in response to the Examiner's assertion that Herz is

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capable of being **adapted** to perform the cited steps. Appellants note that being capable of performing the intended use, and being capable of **being adapted** to perform the intended use are very different. A system that is capable of **being adapted** to perform the intended use may, as in this case, require the addition of one or more patentable features

5   *in order to be adapted* to perform the intended use. Appellants have also noted that the response specifically pointed out how the language of the claims patentably distinguishes the structure of the invention from the cited prior art on page 11, line 21, to page 12, line 7, of the Amendment and Response to Office Action dated April 6, 2005. More specifically, Herz, for example, does not disclose or suggest determining whether the user

10   chooses to receive bids on the one or more products described in the information, and adapted to create a bid request if the user chooses to receive bids on the one or more products described in the information, as required by independent claim 1. Thus, the Examiner's point is moot since: (1) Appellants have pointed out how the language of the claims patentably distinguishes the structure of the present invention from the prior art;

15   and (2) the Examiner has only argued that Herz is capable of **being adapted** to perform the intended use.

The Examiner further asserts that, if the Applicant is claiming these features to be software, then they must be physically embodied on a medium in order to be statutory.

20   The features of the claims may be implemented in software, hardware, firmware, or a combination of the foregoing. Appellants also note that the preamble of the claims clearly states the category of the claim.

The Examiner also asserts that Ojha discloses a system and method that allows a buyer to create a shopping list and designate "whether a particular item will

25   automatically solicit quotes from a plurality of sellers," and that the bid request is sent to the plurality of sellers to solicit quotes over the network shown in FIG. 1 (col. 9, line 37, to col. 10, line 30).

As Appellants have noted, in the text cited by the Examiner, Ojha teaches:

when the buyer finishes specifying the product and clicks on "Go,"
a *search of a proprietary database* is initiated in response to which
relevant product information is presented in the form of a list of products
as shown in interface 500 of FIG. 5. Each entry in the list includes the
manufacturer, specific product information, and *a product price (e.g., the
"Lowest Price" column which displays the lowest list price from among
the **sellers*** selling the specific product via the transaction site).
(Col. 9, lines 37-45; emphasis added.)

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Ojha teaches, therefore, that the proprietary database contains a compilation of information from a number of sellers, e.g. the "Lowest Price." In the text cited by the Examiner in the Response to Arguments section, Ojha does disclose designating "whether a particular item will automatically solicit quotes from a plurality of sellers." Appellants, however, could find *no* disclosure by Ojha that the bid request is *"sent to the plurality of sellers to **solicit quotes over the network*** shown in Figure 1," as asserted by the Examiner. Thus, Ojha does *not* disclose or suggest that a bid request is sent to one or more stores or over one or more network interfaces.

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Thus, Herz et al. and Ojha et al., alone or in combination, do not disclose or suggest a bid agent process adapted to determine whether the user chooses to receive bids on the one or more products and adapted to *create a bid request* if the user chooses to receive bids on the one or more products described in the information; and a broker that *sends the bid request over one or more of the network interfaces to one or more stores*, and *wherein the broker receives bids from the stores* and resends the bids over one or more of the network interfaces to a user, as required by independent claim 1, do not disclose or suggest determining whether the user chooses to receive bids on the one or more selected products described in the information; *creating a bid request* if the user chooses to receive bids on the one or more selected products described in the information; *sending a bid request over one or more network interfaces to one or more stores*, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products; and *receiving bids from the stores* and resending the bids over one or more of the network interfaces to a user, as required by independent

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claims 20 and 21, and do not disclose or suggest a bid agent process that determines whether the user chooses to receive bids on the one or more products described in the information, *where the bid agent process prepares a bid request* when the user chooses to receive bids on the one or more products described in the information, and *where the bid*

5   *agent process communicates the bid request over the one or more network interfaces and communicates to the user any bids received over the one or more network interfaces*, as required by independent claim 22.

    The Examiner also notes that Issa was not relied upon for the cited limitation. The Examiner further notes that Issa does state that "each seller is presented

10   with a set of continually variable data, automatically and dynamically compiled from the aggregate of placed orders." (Paragraph 0139). The Examiner asserts that this suggests that multiple sellers are solicited to bid on orders or requests.

    As Appellants have noted, Issa is directed to an Internet auction method, system and computer site where independent and/or unrelated buyers are automatically

15   pooled to buy products/services as a group in order to entice competitive bidding from pre-approved sellers who take advantage of the large group sales to bid (offer) discounts. (See, Abstract.) Regarding the Examiner's assertion that multiple sellers are solicited to bid on orders or requests, Appellants note that the set of continually variable data taught by Issa is actually *information on the bidding process* provided to sellers; Issa, however,

20   does ***not*** teach to send a *bid request*. Thus, Issa does not address the issue of sending a bid request to one or more stores or over one or more network interfaces.

    Thus, Issa does not disclose or suggest a bid agent process adapted to determine whether the user chooses to receive bids on the one or more products and adapted to *create a bid request* if the user chooses to receive bids on the one or more

25   products described in the information; and a broker that *sends the bid request over one or more of the network interfaces to one or more stores*, and *wherein the broker receives bids from the stores* and resends the bids over one or more of the network interfaces to a user, as required by independent claim 1, does not disclose or suggest determining whether the user chooses to receive bids on the one or more selected products described

30   in the information; *creating a bid request* if the user chooses to receive bids on the one or

more selected products described in the information; *sending a bid request over one or more network interfaces to one or more stores*, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products; and *receiving bids from the stores* and resending the bids over one or more of the network

5   interfaces to a user, as required by independent claims 20 and 21, and does not disclose or suggest a bid agent process that determines whether the user chooses to receive bids on the one or more products described in the information, *where the bid agent process prepares a bid request* when the user chooses to receive bids on the one or more products described in the information, and *where the bid agent process communicates the bid*

10   *request over the one or more network interfaces and communicates to the user any bids received over the one or more network interfaces*, as required by independent claim 22.

Conclusion

The rejections of the cited claims under sections 102 and 103 in view of

15   Herz et al., Ojha et al., and Issa, alone or in any combination, are therefore believed to be improper and should be withdrawn. The remaining rejected dependent claims are believed allowable for at least the reasons identified above with respect to the independent claims.

The attention of the Examiner and the Appeal Board to this matter is

20   appreciated.

Respectfully,

Kevin M. Mason

25   Date: September 11, 2006   Kevin M. Mason
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APPENDIX

1.   A computer system for comparison shopping over one or more networks, the system comprising:

5   one or more central processing units (CPUs), one or more memories, and one or more network interfaces in communication with one or more networks;

a bid agent process adapted to determine whether one or more products are described in information communicated to a user, where the bid agent process is further adapted to determine whether the user chooses to receive bids on the one or more

10   products described in the information and adapted to create a bid request if the user chooses to receive bids on the one or more products described in the information; and

a broker that sends the bid request over one or more of the network interfaces to one or more stores, the broker using one or more values of a closeness measure to determine one or more related products associated with a selected product,

15   where the one or more values of the closeness measure are determined using attributes of the selected product and the one or more related products, the bid request requesting a bid on the selected product and at least one of the one or more related products, and wherein the broker receives bids from the stores and resends the bids over one or more of the network interfaces to a user.

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2.   A system, as in claim 1, where the bid request has a bid protocol, and where the bid protocol includes a product identifier and a bid price.

3.   A system, as in claim 1, where one or more of the stores re-bids if the user

25   rejects a prior bid.

4.   A system, as in claim 1, where one or more of the stores combines a product with one or more second store products when submitting a corresponding bid.

30   5.   A system, as in claim 1, where one or more of the bids have one or more conditions.

6.   A system, as in claim 1, where the bid agent process transmits the bid request to the broker.

7.   A system, as in claim 6, where the bid agent process further sends one or more bid lists to the user, the one or more bid lists containing bids from one or more of the stores about the selected product and bids from one or more of the stores about the at least one of the one or more related products.

8.   A system, as in claim 6, wherein the broker compiles the bids from the stores into a bid list, and sends the bid list to the bid agent process.

9.   A system, as in claim 6, where the bid agent process notifies the user that the bid request is ready for the one or more products described in a Web page, whereby the user can consent to submission by the bid agent process of the bid request to the one or more stores.

10.   A system, as in claim 1, where the broker determines the one or more values of the closeness measure, and where the broker determines the one or more related products by determining that the one or more values of the closeness measure corresponding to the one or more related products are smaller than a replacement factor.

11.   A system, as in claim 1, where the broker determines the one or more values of the closeness measure, and where the broker determines each value of the closeness measure by determining weighted attributes by multiplying attributes of the selected product and the one or more related products by predetermined weight factors, the broker further determining each value of the closeness measure by determining a sum of differences between weighted attributes for the selected product and weighted attributes for one of the one or more related products.

12.   A system, as in claim 1, where the one or more values of the closeness measure are stored in the one or more memories and at least one of the one or more values of the closeness measure has been previously determined.

5   13.   A system, as in claim 1, where the closeness measure is a distance.

14.   A system, as in claim 5, where the conditions included any one or more of the following: a selected product price, a shipping method, a shipping time, a handling method, a product packaging, a set of product delivery instructions, a provision of better

10   deals for bundling two or more products, a recommendation of comparable products, related products, or both, a provision of customer service programs including express checkout in online stores, wish lists, gift registries, reward programs, discount for certain shopping groups, custom-configurable products, and email notification services.

15   15.   A system, as in claim 14, where the one or more related products include any one or more of the following: a replacement product, an up-sell product, a down-sell product, a cross-sell product, a combination product to be used with the selected product, an alternative or substitute product, and a product with a related use.

20   16.   A system, as in claim 1, where the user consents to receiving bids from the stores before the bids from all the stores are sent.

17.   A system, as in claim 1, where a history of the bids is stored in one or more of the memories.

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18.   A system, as in claim 17, where the stored bids are used for a later bid request.

19.   A system, as in claim 1, where the broker determines the stores from

30   which to solicit the bids.

20.   A method for comparison shopping over a network comprising the steps of:

determining whether one or more selected products are described in information communicated to a user;

5   determining whether the user chooses to receive bids on the one or more selected products described in the information;

creating a bid request if the user chooses to receive bids on the one or more selected products described in the information;

using one or more values of a closeness measure to determine one or more

10   related products associated with the one or more selected products, where the one or more values of the closeness measure are determined using attributes of the one or more selected products and the one or more related products;

sending a bid request over one or more network interfaces to one or more stores, the bid request requesting a bid on the one or more selected products and at least

15   one of the one or more related products; and

receiving bids from the stores and resending the bids over one or more of the network interfaces to a user.

21.   A computer program product performing the steps of:

20   determining whether one or more selected products are described in information communicated to a user;

determining whether the user chooses to receive bids on the one or more selected products described in the information;

creating a bid request if the user chooses to receive bids on the one or

25   more selected products described in the information;

using one or more values of a closeness measure to determine one or more related products associated with the one or more selected products, where the one or more values of the closeness measure are determined using attributes of the one or more selected products and the one or more related products;

30   sending the bid request over one or more network interfaces to one or

more stores, the bid request requesting a bid on the one or more selected products and at least one of the one or more related products; and

receiving bids from the stores and resending the bids over the one or more network interfaces to a user.

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22.   A computer system for comparison shopping over one or more networks, the system comprising:

one or more central processing units (CPUs), one or more memories, and one or more network interfaces in communication with one or more networks; and

10   a bid agent process that determines whether one or more products are described in information communicated to a user, where the bid agent process determines whether the user chooses to receive bids on the one or more products described in the information, where the bid agent process prepares a bid request when the user chooses to receive bids on the one or more products described in the information, and where the bid

15   agent process communicates the bid request over the one or more network interfaces and communicates to the user any bids received over the one or more network interfaces.

EVIDENCE APPENDIX

There is no evidence submitted pursuant to § 1.130, 1.131, or 1.132 or entered by the Examiner and relied upon by appellant.

RELATED PROCEEDINGS APPENDIX

There are no known decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c)(1)(ii) of 37 CFR 41.37.